

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

JDS Uniphase Corporation  
2789 Northpoint Pkwy  
Santa Rosa, California 95407  
(Sonoma County)

ID No: CAD 009 110 768

Respondent.

Docket HWCA 2005 0841

CONSENT ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department) and JDS Uniphase (Respondent), formerly known as Optical Coating Lab Inc., and whose corporate address is 1768 Automation Parkway, San Jose, California, 95131, enter into this Consent Order and agree as follows:

1. Respondent generates hazardous waste at the following site: 2789 Northpoint Parkway, Santa Rosa, California 95407 (Site).
2. The Department inspected the Site on February 16, 2005.
3. The Department alleges the following violations:
  - 3.1. The Respondent violated California Code of Regulations, title 22, section 66265.192(h)(1) in that on or about February 16, 2005, the Respondent failed to re-assess the Conditionally Authorized tank unit within the last five years, to wit: the most recent tank assessment dated back to 1998.
  - 3.2. Respondent violated California Code of Regulations, title 22, section 66265. 192(m) in that on or about February 16, 2005, the Respondent failed to reassess the treatment tank system described in (3.1) above, after making structural modifications to the tank.
  - 3.3. Respondent violated California Code of Regulations, title 22, section 66265.192(h)(1) in that on or about February 16, 2005, the Respondent failed to ever

have assessed two holding tanks comprising the ancillary equipment of the treatment tank system described in (3.1) and (3.2) above.

3.4. Respondent violated California Code of Regulations, title 22, section 67450.13 in that on or about February 16, 2005, the Respondent failed to update for inflation the closure cost estimate for the Conditionally Authorized tank treatment system for a period of no less than seven (7) years. The original closure cost estimate was incomplete by not addressing the following elements: demolition and removal of the containment system, transportation and disposal fees for tank residuals and waste inventories, and decontamination.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Jurisdiction exists pursuant to Health and Safety Code section 25187.

6. Respondent waives any right to a hearing in this matter.

7. This Consent Order shall constitute full and final settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

8. Respondent admits the violations above.

#### SCHEDULE FOR COMPLIANCE

9.1. Respondent certifies that they have corrected the conditions underlying the violations alleged in paragraphs 3.1, 3.2, 3.3, and 3.4. The Department relies on the assertion as material facts in entering this order.

9.2. Respondent has submitted documentation to the Department to show that the violations alleged in paragraphs 3.1, 3.2, 3.3, and 3.4 have been adequately corrected or addressed. Therefore, no further actions are required on the part of Respondent with respect to these alleged violations.

9.3. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Dr. Sangat S. Kals, Section Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

9.4. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

9.5. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Consent Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

9.6. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.7. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area

or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.8. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.9. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

9.10. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to

take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

9.11. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

9.12. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

## PAYMENTS

10. Respondent shall to the Department a total of \$15,500, of which \$11,625 is a penalty and \$3,875 is a credit for participation in a Supplemental Environmental Project (SEP) in consisting of a contribution to the California Environmental Protection Agency's (Cal/EPA) Environmental Enforcement and Training Account.

10.1. Respondent's check for \$11,625 (penalty) shall be made payable to the Department of Toxic Substances Control. Respondent's check for \$3,875 (SEP) shall be made payable to the Cal/EPA's Environmental Enforcement and Training Account.

10.2. Respondent's check payable to the Department of Toxic Substances Control shall be delivered within 30 days of the effective date of this Consent Order, together with a copy of the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806.

Respondent's check payable to the Cal/EPA's Environmental Enforcement and Training Account shall be delivered within 30 days of the effective date of this Consent Order, together with a copy of the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806.

A photocopy of each check shall be sent simultaneously to:

Dr. Sangat S. Kals, Section Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

#### OTHER PROVISIONS

11.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

11.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

11.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

11.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

11.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

11.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or the California Regional Water Quality Control Board.

Dated: June 29, 2005

Original signed by Richard Etheredge  
Signature of Respondent

Richard Etheredge, Director, EHS  
Typed or printed name, Title of Respondent  
JDS Uniphase Corp.

Dated: July 18, 2005

Original signed by Sangat Kals  
Dr. Sangat S. Kals, Section Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
Department of Toxic Substances Control